

## Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JULIANNE PANAGACOS et al.,

**Plaintiffs,**

V.

JOHN J. TOWERY et al.,

## Defendants.

No. C10-05018-RBL

**ORDER ON PLAINTIFFS' MOTION  
TO QUASH AND FOR A  
PROTECTIVE ORDER RE: DREW  
HENDRICKS**

This Matter came before the Court on Plaintiffs' Motion to Quash and for Protective Order [Dkt. No. 303] (the "Motion"). The Court has considered the Motion, Defendant Thomas Rudd's Opposition to the Motion, Plaintiffs' reply, if any, and the declarations submitted in support of these respective filings.

Plaintiffs have failed to show good cause to prohibit the deposition of Drew Hendricks. *See* Fed. R. Civ. P. 26(c)(1). Heightened scrutiny to take Mr. Hendricks's deposition does not apply, as Rudd "seeks to depose [Hendricks] as an 'actor' or 'viewer' with non-privileged information . . ." *See Hedden v. City of Seattle*, No. C05-999-TSZ, PACER Dkt. No. 179 (May 30, 2006). Alternately, even if heightened scrutiny did apply to a deposition of Mr. Hendricks pursuant to *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986), Rudd has made the requisite showing that (1) no other means exist to obtain

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1 the information than to depose Hendricks; (2) the information sought is relevant and  
2 nonprivileged; and (3) the information is crucial to the preparation of the case.

3 Rudd has represented that he seeks to depose Hendricks for the purpose of (i)  
4 evaluating potential testimony by Hendricks in this case, and (ii) overcoming any objections  
5 to certain documents based on foundation and authenticity. Consequently, if plaintiffs wish  
6 not to produce Mr. Hendricks for a deposition, they may do so provided that:

7 1. Plaintiffs will not call Mr. Hendricks as a witness in the case (either in their  
8 direct case or as a rebuttal witness), and they will not submit a declaration of Mr. Hendricks in  
9 support of summary judgment; and

10 2. Plaintiffs will not challenge—on the basis of lack of foundation, lack of  
11 personal knowledge, or lack of authentication—any of Mr. Hendricks’ statements

12 Alternately, Plaintiffs may reserve their right to call Mr. Hendricks as a witness and/or  
13 preserve their objections on the grounds above, but must produce Mr. Hendricks for a  
14 deposition on a date agreeable to all counsel on or before May 5, 2014.

15 DATED this 17<sup>th</sup> day of April, 2014.

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18 RONALD B. LEIGHTON  
19 UNITED STATES DISTRICT JUDGE  
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